

32. (twice amended) A fibrous filtration face mask, which comprises:

(a) a harness; and

E2 (b) a nonwoven fibrous layer attached to the harness and containing at least 40 weight percent thermally bonding fibers based on the weight of fibers in the nonwoven fibrous layer, at least 10 weight percent of the fibers in the nonwoven fibrous layer being bicomponent fibers, the nonwoven fibrous layer being molded in a cup-shaped configuration and having a surface fuzz value of not less than 7.5 after being subjected to a surface fuzz abrasion test, with the proviso that if the bicomponent fiber content is 85 weight percent or greater, then the surface fuzz value exceeds 8.0.

REMARKS

Claims 25-37 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The examiner explains:

In the present instance, each of claims 25 and 32 recites the broad recitation "...at least 40 weight percent thermally bonding fibers...", "...at least 10 weight percent of the fibers in the nonwoven layer being bicomponent fibers...", "...a surface fuzz value of not less than 7.5...", and each of the claims also recites "...with the proviso that if the bicomponent fiber content is 85 weight percent or greater, then the surface fuzz value exceeds 8.0." which is the narrow statement of the range limitation.

Applicants respectfully submit, however, that the bicomponent fibers are part of the "at least about forty weight-percent thermally bonding fibers based on the weight of the non-woven fibrous material," (Page 3, lines 27-29). Thus, a product that contains 85 weight percent bicomponent fibers also meets the limitation for containing at least 40 weight percent thermally bonding fibers. There is no conflict in this range or limitation.

The claims also recite that when the bicomponent fiber content is at least 10 weight percent, then the surface fuzz is not less than 7.5, and when the bicomponent fiber content is 85 percent or greater then the surface fuzz exceeds 8.0. (Table 1 and page 4, lines 12-17). This

clearly sets forth the metes and bounds of the invention. It does not describe a narrow limitation that falls within a broad limitation in the same claim.

Claims 25-31 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The Examiner holds that the use of "...and optionally..." renders the scope of the claim unclear. This position, however, does not find support in the law. The Examiner's attention is directed to *Ex parte Cordova*, 10 USPQ 2d 1949, 1952 (Bd. Pat. App. & Int. 1989), where the PTO Board of Patent Appeals and Interferences held that use of the word "optionally" does not render a claim indefinite because it is "akin to expressions such as "up to" and "0 to...."

Claims 25-37 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,807,619 to Dyrud et al. (Dyrud). The Examiner held that a process of molding, which includes the use of heat as disclosed by Dyrud, would have resulted in a shaping layer of the present invention.

If Dyrud's teaching is followed, using its hot molding method, it would not be expected that surface fuzz value would exceed 8.0, even when using 100% bicomponent fiber. See Fig. 6 and Table 1 of applicants' specification, where the maximum surface fuzz value for a hot molded web that had 100% bicomponent fiber was not greater than 8.0. For such a product, applicants' invention would exhibit a superior surface fuzz value, for example, 9.6, as shown in Table 1. The examiner's attention is directed to *In re Legrice*, 133 USPQ 365, 373 (1962), where the court held that for a prior publication to act as a bar to the issuance of a patent, its "description of the invention in the printed publication must be an 'enabling' description." Dyrud does not teach or suggest a cold molding method for making a shaping layer, and therefore Dyrud would not be expected to provide the surface fuzz values of the present invention. Accordingly, Dyrud does



not provide a teaching that would have enabled a person of ordinary skill to practice the present invention under the terms of 35 U.S.C. § 112, second paragraph. Without an enabling teaching, Dyrud would not have rendered applicants' invention obvious within the meaning of 35 U.S.C. 103(a).

Please favorably reconsider the rejection in light of the above remarks and allow this application at an early date.

Dated this 29th day of February, 2000.

Respectfully submitted,

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Pursuant to 37 C.F.R. § 1.8 I certify that this correspondence is being deposited on the date indicated below with the United States Postal Service as First Class Mail in an envelope addressed to:
Assistant Commissioner for Patents, Washington, DC 20231

Karl G. Hanson

Dated: February 29, 2000